IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

OP.No. 14191 of 2001(M)

PETITIONER:

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1. S.SELVARAJ, 73, NO.3-SYRIAN CHURCH ROAD, COIMBATORE.

2. S.JAYARAJ, 73, NO.3-SYRIAN CHURCH ROAD, COIMBATORE.

3. S.MOHANRAJ, S/O.T.V.SUBRAMANIAN PILLAI,
FLAT NO.80F, APPAVU NAGAR COLONY, HOSUR.

4. S.BABY LAKSHMY, 73, NO.3-SYRIAN CHURCH ROAD, COIMBATORE.

5. S.PREMA, W/O. LATE G.S.PILLAI, PUTHEN VEEDU, TANUR.

6. S.RADHA, W/O. LATE BALAKRISHNAN PILLAI, ASWATHY,
ASOKAPURAM, ALWAYE.

7. S.SANTHA, W/O. LATE SIVANARAYANAN PILLAI,
SIVASAKTHIM, KAKUSHIPALAM, EAST CALICUT.

8. S.USHARANI, W/O. R.V.SUBRAMANIAN PILLAI,
VENKITAKRISHNA NAGAR,
NO.9, FIRST STREET, ARUMBAKAM,
CHENNAI.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SRI.SUNIL SHANKER

RESPONDENTS:

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1. THE COMMISSIONER, COMMERCIAL TAXES, THIRUVANANTHAPURAM.

2. AGRICULTURAL INCOME TAX & SALES TAX OFFICER, MANNARKKAD.

BY ADV. SHRI.K.P.PRADEEP, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO. 14191/2001

ORDER ON CMP NO.22522/2001 IN O.P.NO. 14191/2001

DISMISSED.

01/12/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE DOCUMENT NO.1024/1964.
P2 : COPY OF DOCUMENT NO.1023/1964.
P3 : COPY OF DOCUMENT NO. 1025/1964.
P4 : COPY OF DOCUMENT NO. 1026/1964.
P5 : COPY OF DOCUMENT NO. 2202/1967.
P6 : COPY OF DOCUMENT NO. 2947/1964.
P7 : COPY OF DOCUMENT NO. 2948/1964.
P8 : COPY OF DOCUMENT NO. 2537/1967.
P9 : COPY OF DOCUMENT NO. 3294/1967.
P10 : COPY OF DOCUMENT NO. 3295/1967.

P11 : COPY OF THE LICENCE OBTAINED FROM THE CENTRAL EXCISE INSPECTOR, MANNARKKAD.

P12 : COPY OF THE LICENCE OBTAINED FROM THE CENTRAL EXCISE INSPECTOR, MANNARKKAD.

P13 : COPY OF THE INSPECTION REPORT OF THE 2ND RESPONDENT.

P14 : COPY OF THE APPELLATE ORDER PASSED BY THE REVENUE DIVISIONAL OFFICER, OTTAPPALAM.

P15 : COPY OF THE NOTICE ISSUED by the 2ND RESPONDENT.

P16 : COPY OF THE OBJECTION FILED BY THE PETIITONER NO.2 BEFORE THE 2ND RESPONDENT.

P17 : COPY OF THE PRE-ASSESSMENT NOTICE ISSUED by the 2ND RESPONDENT.

P18 : COPY OF THE PRELIMINARY OBJECTION FILED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT.

P19 : COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1990-91.

P20 : COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1991-92.

P21 : COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1992-93.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 14191 of 2001

Dated, this the 1st day of December, 2007

J U D G M E N T

Heard learned counsel for petitioners and learned Government Pleader.

2. Petitioners are challenging Exts.P19, P20 & P21 orders of assessment issued by the Assessing Officer, revising AIT assessments for the assessment years 1990-91, 1991-92 & 1992-93. The reason for revision is on account of shortage of planted area declared by the petitioners in the original return. The Assessing Officer found that higher extent of planted area is shown in the plantation tax assessment and therefore, the AIT assessments completed for the assessment years 1990-91, 1991-92 and 1992-93 have to be reopened to bring the tax escaped income from such planted area, that was not declared by the petitioners in the returns. Even though assessments should be challenged in appeal, petitioners filed this original petition on the ground that revised assessments are time barred and therefore without jurisdiction. However, it is seen that the Commissioner has passed Exts.P19 to P21 orders under Section 41(2) of the AIT Act 1991 extending 5 years' time for the officer to revise the AIT

assessments. Learned counsel for the petitioners submits that AIT Act, 1950 is applicable for the first assessment, i.e. the assessment for the assessment year 1990-91, because the new act came into force only on 01/04/1991. This contention is tenable because Section 99(3) of the new Act provides for revision of assessment for bringing the escaped agricultural income to tax by invoking the provisions of the repealed Act. Learned counsel pointed out that the repealed Act, in Section 35, provides for a time limit of 5 years. According to the petitioners, assessment for the assessment year 1990-91 was reopened and revised after 5 years from the relevant year, which is not permissible under the old Act. However, learned Government Pleader pointed out that proceedings were issued by the Commissioner and not by the Assessing Officer and therefore, Ext.P19 cannot be treated as escaped assessment covered by Section 35 of the Act. According to the learned Government Pleader power of the Commissioner to order revision of assessment is provided in Section 34 of the 1950 Act, which does not prescribe any time limit for ordering revision of assessment. I find substance in this argument because even though the provision quoted in the order of the Commissioner is Section 41(2) of the new Act, in affect,

the power exercised by him is suo motu revision of assessment, which is authorised by Section 34 of the 1950 Act. In the circumstances, this argument also cannot be accepted. Consequently, Exts.P19 to P21 revised assessments completed by the Assessing Officer pursuant to the Commissioner's orders for the assessment years 1990-91 to 1992-93 are not barred by limitation.

3. However, learned counsel for petitioners pointed out that plantation tax assessment relied on by the Assessing Officer was the subject matter of appeal and the appellate authority had set aside and remanded the matter. If the extent of plantation for AIT assessment is adopted from plantation tax assessment and if such assessments are modified in revised assessments after appeal, it is for the Assessing Officer, under the AIT Act, to rectify the assessments based on revised plantation tax assessment. However, if he has independent material about actual extent of planted area, he is free to refer to the same and pass orders. The petitioners are directed to produce revised plantation tax assessment issued after appeal along with copy of this judgment for the Assessing Officer to modify the assessment, if required.

4. If there is no such reduction in the planted area

mentioned in the revised plantation tax assessment, then respondents are free to proceed for recovery as per the orders already issued, which are challenged in this original petition, but upheld by this Court.

The original petition is disposed

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg